SUBJECT INDEX

PAGE

Opinions below 1

Jurisdiction 2

Statement of the case 2

Opinions below 12

Specification of errors 13

Summary of argument 14

Argument 20

I.

The County's requirement that its employees execute the Organizations Oath is an unconstitutional abridgment of the freedoms of speech, press, assembly and belief guaranteed by the First and Fourteenth Amendments to the Constitution 20

A. The Organizations Oath requirement is unconstitutional because, even assuming arguendo the constitutionality of respondents' objective, the oath requirement is an unreasonable method of achieving it 21

1. The coercive effect of the requirement to render an accounting to the State of associations and beliefs 22

2. Breadth of effect of Organizations Oath requirement 24

3. Pernicious character of inquisitional procedure from standpoint of freedom of belief and individual security 31

4. Unconstitutionality of County's use of Organizations Oath as a method of achieving its objective 35

5. Invalidity of oath because it imposes restraint directly upon First Amendment rights 37

PAGE

B. The fact that the persons required to take the oath are employees of the County does not render it constitutional 40

Lack of justification for oath as an exercise of the power to determine fitness of employment 43

II.

The issue of the constitutionality of the County's requiring its employees to execute the oath was properly accepted by this court for adjudication 47

A. The State Court's judgment is based upon its determination of this issue 47

B. The issue of the constitutionality of the County's requiring subscription to the oaths presents a justiciable controversy 51

Conclusion 58

TABLE OF AUTHORITIES CITED

CASES	PAGE
Aetna Life Insurance Co. v. Haworth, 300 U. S. 227	52, 53
Barsky v. United States, 167 F. 2d 241; cert. den. 68 S. Ct. 1511	24, 28
Board of Education v. Barnette, 319 U. S. 624	30, 33
Botany Worsted Mills v. N. L. R. B., 106 F. 2d 203	24
Bridges v. California, 314 U. S. 252	22, 31
Bridges v. Wixon, 326 U. S. 135	28
Brinegar v. United States, 338 U. S. 160	32, 37, 57
Borchard, Declaratory Judgment (2d Ed.), p. 858	55
Brown v. Walker, 161 U. S. 591	34
Cantwell v. Connecticut, 310 U. S. 296	21, 22, 27, 30, 36, 39
Carlson v. California, 310 U. S. 106	27
Columbia Broadcasting System v. United States, 316 U. S. 407	56
Columbia Pictures Corp. v. DeToth, 26 Cal. 2d 753	55
Connecticut Mutual Ins. Co. v. Moore, 333 U. S. 541	52, 56, 57
Connolly v. General Construction Co., 269 U. S. 385	34
Cummings, Ex parte, 4 Wall. 277	28, 31, 33, 42, 46
Danskin v. San Diego Unified School Dist., 28 Cal. 2d 536	27, 41
DeJonge v. Oregon, 299 U. S. 353	25, 29, 38
Electric Bond and Share Co. v. S. E. C., 303 U. S. 419	23, 52
Euclid v. Ambler Realty Co., 272 U. S. 365	50
Fong Haw Tan v. Phelan, 333 U. S. 6	42
Frost v. R. R. Comm. of Calif., 271 U. S. 583	41
Garland, Ex parte, 4 Wall. 330	28, 32, 42
Hague v. C. I. O., 307 U. S. 496	41
Hannegan v. Esquire, 327 U. S. 146	41
Hirabayashi v. United States, 320 U. S. 81	37

PAGE

Indianapolis Power & Light Co. v. National Labor Relations Board, 122 F. 2d 757; cert. den. 315 U. S. 804 24

International A. M. v. National Labor Relations Board, 311 U. S. 72 56

Jamison v. Texas, 318 U. S. 413 41

Jones v. S. E. C., 298 U. S. 1 33

Josephson v. United States, 165 F. 2d 82; cert. den. 68 S. Ct. 609 23

La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U. S. 18 56

Lanzetta v. N. J., 306 U. S. 451 34

Maguire v. Hibernia Savings and Loan Society, 23 Cal. 2d 719 55

Marsh v. Alabama, 326 U. S. 501 41

Martin v. Struthers, 319 U. S. 141 ..... 30, 36, 39

Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U. S. 270 57

Milwaukee Publishing Co. v. Burleson, 255 U. S. 407 ..... 41, 43

Missouri ex rel. Gaines v. Canada, 305 U. S. 337 41

Murdock v. Pennsylvania, 319 U. S. 105 ..... 22, 23, 36, 39

Musser v. Utah, 333 U. S. 95 34

Myers v. Bethlehem Corp., 303 U. S. 41 50

National Labor Relations Board v. Virginia Electric & Power Co., 314 U. S. 469 56

Near v. Minnesota, 283 U. S. 697 23

Oklahoma National Gas Co. v. Russell, 261 U. S. 290 50

Pennekamp v. Florida, 328 U. S. 331 57

Pennsylvania v. West Virginia, 262 U. S. 553 50

People v. Crane, 214 N. Y. 154, 108 N. E. 427 42

Perkins v. Elg, 307 U. S. 325 55

Respublica v. Gibbs, 3 Yates 429 34

PAGE

Saia v. New York, 334 U. S. 558 ..... 27, 36, 39
Schneider v. State, 308 U. S. 147 ..... 21, 22, 23, 36, 39
Sinclair v. United States, 279 U. S. 263 33
Smith v. Illinois Bell Telephone Co., 270 U. S. 587 50
Stromberg v. California, 283 U. S. 359 25
Terminiello v. Chicago, 337 U. S. 1 ..... 11, 25
Thomas v. Collins, 323 U. S. 516 ..... 22, 27, 28, 36, 38
Thornhill v. Alabama, 310 U. S. 88 ..... 21, 22, 23, 27, 36
Toomer v. Witsell, 334 U. S. 385 55
Truax v. Raich, 239 U. S. 33 42
United States v. Ballard, 322 U. S. 78 30
United Public Workers v. Mitchell, 330 U. S. 75 ..... 13, 37, 40, 46, 52, 55
United States v. Collins, 25 Fed. Cas. 545, 549-550 (No. 14837), C. C., S. D. Ga., 1873 34
United States v. Lovett, 328 U. S. 303 42
Utah Fuel Co. v. Bituminous Coal Commission, 306 U. S. 56 ..... 24, 50
Wheeling Steel Corp. v. Glander, 337 U. S. 562 41
Winters v. New York, 333 U. S. 507 ..... 25, 27, 34, 36
Wolf v. Colorado, 338 U. S. 25 32
Young, Ex parte, 209 U. S. 123 55

MISCELLANEOUS

49 Columbia Law Review, pp. 759, 760, 792, Davis, Standing to Challenge and to Enforce Administrative Action 53
Frankfurter, Mr. Justice Holmes and the Supreme Court (1938), p. 57 41
61 Harvard Law Review (1948), pp. 592, 608, O'Brian, Loyalty Tests 28

PAGE

New York Times, Oct. 9, 1949, p. 1 47

Senate Report No. 1005, 73rd Cong., 2d Sess., pp. 2-3 55

Survey of Current Business, Department of Commerce, Bureau of Census for July, 1948 41

STATUTES

Judicial Code of 1948, Sec. 1257(3) (28 U. S. C., Sec. 1257(3)) 2

Los Angeles County Ordinance No. 4935 (N. S.) 3

United States Constitution, First Amendment 12, 13, 14, 15, 16, 18, 20, 22, 25, 31, 35, 37, 58

United States Constitution, Fourteenth Amendment 12, 13, 18, 20, 32, 58

IN THE

Supreme Court of the United States

October Term, 1949.

No. 50.

JULIA LEARNED STEINER,

Petitioner,

vs.

COUNTY OF LOS ANGELES, *et al.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District

BRIEF FOR PETITIONER.

Opinions Below.

The opinion of the Superior Court of California [S. 35-43][1] is not reported. The opinion on appeal of the District Court of Appeal [S. 47, P. 47-63] is reported in 88 Cal. App. 2d 481. The Supreme Court of California rendered no opinion in entering its order denying a hearing [S. 49].

[1]The pages of the transcript of record in the case at bar will be designated "S." The opinion of the District Court of Appeal which was rendered in the instant case and in the case of *Parker v. County of Los Angeles, et al.*, with which it was consolidated, is printed only in the *Parker* record. The pages of the *Parker* record will be designated "P."

Jurisdiction.

This Court, acting under Section 1257(3) of the Judicial Code of 1948 (28 U. S. C. 1257(3)), granted petitioner's petition for a writ of certiorari to the District Court of Appeal of California, Second Appellate District, on June 13, 1949 [P. 78]. That Court had entered judgment for the respondents on November 12, 1948 [S. 47, 48], overruling, as had the trial court, petitioner's Federal constitutional objections [P. 60-62]. The Federal constitutional objections were again urged upon the Supreme Court of California [P. 64, 69-72], in which a hearing is discretionary after a decision in the District Court of Appeal; that Court declined to grant a hearing, one Justice voting in favor of a hearing [S. 49].

Statement of the Case.

There are no disputed issues of fact, the trial court having sustained respondent's demurrer [S. 33-34] to petitioner's amended complaint [S. 32].

The Complaint.—The Petitioner, who has been employed as a librarian in a permanent Civil Service position by the County of Los Angeles since 1946, brought this action as a representative suit on her own behalf and on behalf of the other 20,000 County employees, all of whom are similarly situated with respect to tenure, discipline, and regulation of employment [S. 1-2]. The purpose of the action, insofar as here relevant, was to enjoin the County's enforcement of its requirement that its employees execute a "Loyalty Oath," hereinafter described, on the grounds that the requirement violates the First and Fourteenth Amendments to the Federal Constitution, and to secure a declaratory judgment that the requirement so violates the Constitution [S. 13-14].

The undenied allegations, insofar as here pertinent, are that in August, 1947, the Board of Supervisors of Los Angeles County, who are among the respondents, adopted a program for the enforcement of a "loyalty check" among all County employees and established a Committee of four County officials, who are likewise respondents, to enforce the program [S. 3, 4, 15-17]. The loyalty check program provided *inter alia* that all County employees be required to execute a specified Loyalty Oath [S. 51], hereinafter described, which petitioner has refused to execute [S. 32]; the Board of Supervisors through one of its members has announced that any employee refusing to execute the required Oath will be discharged and the Committee appointed by the Board has threatened and will, unless judicially restrained, cause any employee so refusing to be discharged or otherwise penalized in employment [S. 4].

The Loyalty Oath.—The County's requirement that the Oath be executed applies to all of the approximately 20,000 County employees, who are divided into some 80 departments, such as Agriculture, Charities, Courts, Health, Library, Parks, Pound and Roads.[2] The portion of the Loyalty Oath here in controversy, hereinafter termed the Organizations Oath, requires the employee to swear or affirm as to whether or not he has ever been a member of, directly or indirectly supported, or followed any of 144 listed organizations and two publications [S. 18-23]. The County's purpose in requiring execution of the Oath was to aid it in determining whether there were any "Communists, avowed or otherwise" in its employ [S. 15] and whether the employee was "an advocate of subversive or Communistic doctrines" [S. 17]. The County officers who

---

[2]See Ordinance No. 4935, N. S. (effective July 1, 1947), of County of Los Angeles.

devised the Oath for the Board of Supervisors stated that the list of organizations as to which disclosure is required was compiled on the basis of the organizations "mentioned" in the reports for 1943, 1945 and 1947 of the Joint Fact-Finding Committee on un-American Activities of the California State Legislature, known as and hereinafter termed the Tenney Committee. The County officers indicated that the listed organizations may have "publicly alleged purposes which have every appearance of being patriotic and worthy" [S. 16] and stated that:

> "A careful reading of the Tenney reports will disclose that there are instances in the reports where organizations are named, but it was not claimed by the Fact Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting out Communism, it is a practical approach to start with the organizations which are known to exist for the purpose of overthrowing our government, or are known to be subversive or Communistic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence." [S. 16.]

The list includes all types of organizations: labor unions, such as the American Communications Association [S. 18], the Federation of Architects, Engineers, Chemists and Technicians [S. 20] and the United Federal Workers [S. 22]; young people's organizations such as American Youth for Democracy [S. 19], the American Student Union [S. 19], and the National Students League [S. 22]; a veteran's organization, the American Veterans' Com-

mittee [S. 19]; political organizations, such as the Farm Labor Party [S. 20] and the Progressive Committee to Rebuild the American Labor Party [S. 22]; organizations dealing with civic affairs, such as the Hold the Price Line Committee [S. 21], the Citizens Committee for Better Education [S. 19], and the League of Women Shoppers [S. 21]; organizations concerned with racial problems, such as the Citizens' Committee for Defense of Mexican-American Youth [S. 20], the National Negro Women's Council [S. 22], and the National Negro Congress [S. 22]; and organizations dealing with foreign or international affairs, such as the American Committee for a Free Indonesia [S. 18], the American Council on Soviet Relations [S. 19], the American Friends of the Chinese People [S. 19], and the American League Against War and Fascism [S. 19]. Two publications, the Daily Worker and the New Masses, are also included [S. 20, 22]. There is no change in the phraseology of the Oath in connection with their listing; under its terms the employee must disclose whether he has ever purchased or read these publications.

The list of organizations incorporated in the Oath contains a citation for each organization to that portion of the Tenney Report in which it is discussed; our consideration in the succeeding paragraphs of the grounds for the County's listing of the various organizations is based upon these citations.[8]

---

[8]As in the list of organizations incorporated in the Organizations Oath, the 1943, 1945 and 1947 Tenney Committee Reports will be cited as "43," "45," and "47" respectively, followed by a dash and the pertinent page number. A check of the list shows some obvious misprints, such as "425" opposite the listing of the American Committee for the Protection of Foreign Born, instead of "45." Correction has been made for such misprints and they will not be noted. A set of the Tenney Committee Reports has been deposited with the Clerk for the convenience of the Court.

The basis for the Tenney Committee's unfavorable view of an organization and for the County's listing of it is in the majority of cases an inference as to the character of the organization from the character of an individual or individuals connected with it; frequently the character of the individual has in turn been inferred from his connection with another organization, and the character of that organization inferred in turn from the character of associated individuals, the inferential chain leading to the conclusion as to the character of the listed organization varying in length. Thus, for example, the data respecting the Progressive Committee to Rebuild the American Labor Party [S. 22] and a number of other organizations[4] is that they were organizations to which one Rathborne belonged, who was once President of the American Communications Association. A speech of Rathborne's had been recommended to members of a union which the Tenney Committee alleged was Communist-dominated, by the union's publication, and though the Committee states that Rathborne "for a brief time resisted the efforts of Communists to penetrate his union" he was "closely associated with many Communist party functionaries and members." Rathborne once attended a meeting of an unspecified but "significant" nature with another labor leader, the Labor Director of the Communist Party, and a high official of one of the organizations deemed by the Committee a "Communist front" [all 47—210].

It is to be noted that here, as is generally the case throughout the Tenney Reports, no attention is given in

---

[4]Namely, the Citizen's Committee to Free Earl Browder [S. 20]; Council for Pan-American Democracy [S. 20], Congress of Mexican and Spanish-Mexican Peoples of U. S. [S. 20], Committee for Support of S. N. Gerson [S. 20], National Emergency Conference [S. 22], and the Committee Protesting Attacks Against the Abraham Lincoln Brigade [S. 20].

the series of inferences to the time interval between the person's connection with one organization or person, from which his suspicious character is inferred, and his connection with another from which the adverse inference as to the latter is drawn. It is also to be noted that the Tenney Committee may not attempt to reconcile inconsistencies in its information as to the person's sympathy with Communists, as in Rathborne's case, but nevertheless bases an inference as to an organization on his connection with it. The data on which is based the listing of the American Communications Association, which is an organization implicated in the series of inferences respecting Rathborne and the organizations with which he was affiliated, likewise illustrates the process of inference from character of the person to character of the organization and back again. Thus, the incriminating items respecting the American Communications Association are its leadership by Rathborne [47—173; 47—210]; the fact that the chairman of one of its locals served on the faculty of the People's Educational Center, which the Committee deems Communist-dominated [47—72]; and that an ex-Communist stated that in 1937 the Association was represented at a Communist Party Trade Union week-end school [43—141]. Similarly, the same type of inference is utilized respecting the National Council on Soviet-American Friendship and the National Federation for Constitutional Liberties; there the adverse data is that "affiliated" with them at an unspecified time and for an unspecified period was one Flaxer who had been president of a union deemed by the Tenney Committee to be a "Communist front group" [47—219].[8]

[8] In a few cases an inference as to an organization is drawn from the connection with it of an alleged Communist Party member; thus, the data cited as to the Abraham Lincoln Brigade is that a Communist Party member fought in that Brigade in Spain [S. 20; 43—140]. However, more frequently the allegation as to the individual's character is of the less specific type illustrated in the text.

Despite the Tenney Committee's extensive reliance on inferences as to organizations from the character of persons connected with them, the Committee dismisses as insignificant the fact that persons concededly wholly beyond suspicion are connected with a suspected organization, regardless of the importance of their connection. Thus, the Committee finds it "amazing," but apparently not significant as to the California Labor School's character, that the School [S. 19] has joined in programs with the non-suspect University of California and that the Dean of the University's Extension Division and numerous other non-suspect persons are among the School's sponsors and faculty members [47—88, 89]. And despite this element of confusion about the School, and though the University is not listed as suspect because of its connection therewith, the American Russian Institute is listed [S. 19] because persons from the Institute taught at the School and its director was President of the Institute [47—88, 103]. Association with the People's Educational Center is similarly treated. The Committee considers it of adverse significance that the faculty included individuals who had some Communist connection, though the connection in some cases is as tenuous as that the teacher was the brother of someone prominent in alleged "Communist front" organizations; however, the fact that the faculty also included a Federal District Court judge and a number of non-suspect University of California professors [see 47—95] is passed over [47—71].

In some instances the inference about the organization is based on its connection with another organization, with-

out the involvement of any individual. Here too, the connection may be of the most fragmentary nature. Thus, the Humanist Society of Friends [S. 23] is charged with having been the recipient in 1934 of a distribution of a publication attacking the Hearst press which had been put out under the direction of the Communist Party [43—119]. Similarly, the data against a number of organizations[6] is that they had received a mailing list of persons who might be interested in receiving their literature, from other organizations characterized as Communist fronts [47—55, 56]; and one organization was said during World War II to be closely associated with a "Nazi front" organization and "created by associates" of the Secretary of one of them [43—259].

While the Committee frequently, as in the case of most of the organizations above-discussed, mentions the organization unfavorably but without attempting to formulate a conclusion as to its character, in a number of other instances it characterizes the organization but without mention of supporting data. Thus, with reference to the American Artists Congress [S. 18] the County cites the Tenney Committee's quotation of a report of the California State Federation of Labor stating that the Congress has been "identified" by the Tenney Committee "as a Communist-sponsored organization" [S. 47-81, 82]. And a number of organizations are merely said to be "noted for their pro-Soviet and pro-Communist tendencies" [47—

---

[6]The Elizalde Anti-Discrimination Committee [S. 20], Hold the Price Line Committee [S. 21], American Committee for a Free Indonesia [S. 18], Citizens Committee for Better Education [S. 19].

202].[7] In some cases a witness merely stated that he regarded the organization as a Communist front; thus, the only data about the American Federation for Political Unity [S. 19] is that a witness said it was headed by someone whom she regarded as "taken over . . . by the Communists" [43—96].

A number of organizations addressed to minority rights are mentioned as "among the Communist front organizations for racial agitation" [47—45].[8] The only support for the conclusion that this is their true character is the Tenney Committee's view that the "fomenting of racial prejudices and antagonisms is an important tactic in the Communist Party . . . technique"; thus though an organization purports to champion minority rights, it should instead be regarded as existing "to intensify racial antagonisms" [47—45]. The only data indicating that

---

[7]These are the Coordinating Commission to Lift the Embargo [S. 20], Joint Committee for Trade Union Rights [S. 21], National Federation of Constitutional Liberties [S. 22], American Committee for Democracy and Intellectual Freedom [S. 18], Refugee Scholarship and Peace Committee [S. 22], Emergency Committee to Aid Spain [S. 20], Emergency Trade Union Conference to Aid Spanish Democracy [S. 20], Harry Bridges Defense Committee [S. 21], Committee for Boycott Against Japanese Aggression [S. 20], Committee to Defend America by Keeping Out of War [S. 20], and the American Council on Soviet Relations [S. 19]. We have omitted organizations which are grouped with these in this passage of the Report, but about which there is additional data in the Reports.

[8]These are the American Committee for the Protection of Foreign Born [S. 18], American Committee to Save Refugees [S. 18], Joint Anti-Fascist Refugee Committee [S. 21], American Friends of the Chinese People [S. 19], First Congress of Mexican and Spanish-American Peoples of U. S. [S. 21], Jewish Peoples Committee [S. 21], League of Struggle for Negro Rights [S. 21], National Committee to Abolish the Poll Tax [S. 21], and National Negro Women's Council [S. 22].

these organizations were "Communist fronts" other than the inference from their interest in minority rights, is, in the case of one of them, the American Committee for the Protection of the Foreign Born [S. 18], that two suspected persons are connected with it, though the suspicion as to these individuals in turn is based in part on their connection with the organization [47—202, 47—219].

In a few exceptional cases the organization's work has been considered in some detail in that its publications have been studied to show that its position on international affairs reflected Soviet Russia's changing foreign policy,[9] or that it manifested an opposition to Fascism and not to Communism.[10]

Aside from a few such exceptional cases the condemnation of the organization is based on inference from association of the type already described: that is, inference from the connection with the organization of some person or persons claimed to be associated with a Communist or

---

[9]As in the case of excerpts from publications of the Federation of Architects, Engineers, Chemists and Technicians [47—204-207].

[10]As in the testimony with respect to the Mobilization for Democracy [47—49].

The 1948 Tenney Report, which was issued after the compilation of the County's Organizations Oath list, includes the American Civil Liberties Union as a Communist front organization. This characterization is based mainly on the allegation that its legal efforts are largely on behalf of Communists; the Committee thus ignores the Union's activity in behalf of civil liberties for all groups including those who attack Communists (See Brief of American Civil Liberties Union, as *amicus curiae*, in this Court in *Terminiello v. Chicago*, No. 272, October Term 1948. The Committee also concludes, for no apparent reason, that the Union's policy announcement that a Communist could not genuinely believe in civil liberties was merely a "Communist strategy" on the part of the Union.

with another organization charged in similar manner with having a Communist taint. Except for whatever inference may be drawn from sympathy with Russia on the part of the very few organizations manifesting such sympathy, and except for the Communist Party, the Communist International, and the Communist Political Association, there is no indication or allegation of any sort that any of the listed organizations either covertly or overtly advocated, advised, or in any way espoused or believed in overthrow of the government by force or violence or in any other illegal or anti-democratic practice.

Opinions Below.

The District Court of Appeal, affirming the Superior Court's judgment and incorporating the latter's opinion in its own, upheld the County's requirement that all of its employees execute the Organizations Oath disclosing whether or not the employee had ever had any association with, or followed, any of the 144 listed organizations and two periodicals.[11] The Court rejected petitioner's arguments that the compulsion to so account for association or "following" violated her rights to freedom of speech, press, assembly, and belief as guaranteed by the State Constitution and the First and Fourteenth Amendments to the United States Constitution [P. 56, 61-62]. The Court

---

[11]The Court likewise upheld the requirement of execution of the Oath respecting membership in organizations advocating overthrow of the government by force and violence; the validity of that Oath is not being contested by petitioner.

upheld the constitutionality of the County's requiring its employees to execute the Oath on the basis of the State's power to require persons, as a condition of their employment by the Government, to refrain from advocacy of overthrow of the government by force and violence and its consequent power to require them, as a condition of employment, to make disclosures relative to such advocacy [P. 51-52, 55-56].

The opinion of the Superior Court, incorporated in the District Court opinion, held that the County's requiring execution of the Oath as a condition of employment did not contravene the State and Federal guarantees of freedom of speech, opinion, press, and assembly [P. 60-61]; it relied largely on this Court's decision in *United Public Workers v. Mitchell*, 330 U. S. 75, quoting that part of the opinion which refers to the constitutionality of prohibiting active participation in politics for the sake of efficiency of governmental service [P. 62-63].

Specification of Errors.

The District Court of Appeal erred in holding that the County's requirement that petitioner execute the Organizations Oath, which necessitates disclosure of association with, or following of, 144 organizations and two periodicals, was not a violation of her rights to freedom of speech, press, assembly, and belief under the First and Fourteenth Amendments to the Constitution of the United States.

Summary of Argument.

I.

A. The Organizations Oath requirement, forcing disclosure of all contact with the 144 listed organizations and two periodicals, must be held unconstitutional unless the restraint it imposes on First Amendment freedoms is no greater than that necessary to accomplish the State's objective, even assuming the validity of the latter. The Organizations Oath utterly fails to meet this test, which has been established as basic in First Amendment cases by this Court's holdings. It is evident from the County's own statements that the broad impairment of First Amendment freedoms effected by the Oath was not necessary to accomplish the County's professed objective of determining whether any of its employees advocate overthrow of the government; the Oath procedure is at best an easy and convenient blunderbuss, rather than a narrowly drawn measure such as the Constitution commands when First Amendment rights are involved.

The effect of the Organizations Oath requirement clearly is to coerce County employees and potential employees not to engage in the associations or beliefs about which they must thereunder render an accounting and disclosure to the State; for subjection to the obligation to account, like subjection to censorship, necessarily deprives the citizen of full freedom of choice and constrains him to direct his beliefs and activities into channels that seem likely to be approved. Even if only the organizations on the present Oath list are considered, the coercion of the Oath requirement extends to association with organizations dealing with practically all political, social and economic questions of current interest and to all types of organizations from

youth groups to trade unions; and the organizations include many which the County concedes not only have avowed lawful and worthy purposes, but which, even under the ill-founded Tenney Committee conclusions, can be charged with nothing worse than that an allegedly Communist tainted organization or individual was attempting to gain influence over them. The coercion of the Oath reaches not only to all types of association with these organizations but to "following" the views expressed by them as well. And clearly, no organization venturing to entertain or study a nonconformist viewpoint is safe from the accounting requirement in view of the lack of standards the County has utilized in compiling the present Oath list. Thus, as in the case of other broad and uncircumscribed assertions of power affecting First Amendment rights, the Oath in reality restrains the free exercise of the rights in all the respects that are within the range of the asserted power; in the instance of the Oath the power, and thus the restraint, encompasses the freedom to assemble and hold beliefs relative to any minority view.

Freedom of the press is likewise affected over a broad field, for the power exercised in the Oath to require an accounting as to reading of the listed publications would necessarily constrain the employee in his choice of all reading matter of an unorthodox nature. Further, since freedom of speech and the press are, as this Court has recognized, necessarily impaired by restraint on the right to assembly, the full effect of the Organizations Oath requirement is to destroy not only freedom of press, assembly, and belief, but freedom of speech as well with respect to all minority or non-conformist thought.

Close scrutiny of the justifiability of the Oath is necessary not only because of its extremely broad impairment

of First Amendment freedoms, but also because the impairment is effected by a procedure which is itself uniquely dangerous to the sacrosanct principle of freedom of belief and in contravention of principles deemed by this Court basic to fairness and individual security. For an inquisitional Oath, which is here brought to its full fruition in a searching canvass of all minority association and sympathy, is a unique weapon for the ascertainment of belief. And in the field of belief and expression an inquisition such as that embodied in the Oath has all the evils of an indiscriminate and unreasonable search. Further, validation of the Oath would mean that the State can force a citizen to establish his innocence, though it has no information as to his culpability, and require him to reveal initial evidence of guilt, in order to supply the State with a basis for initiating proceedings against him.

In view of the extent to which the Oath impairs, and indeed, contrary to this Court's doctrine, directly conditions, the free exercise of First Amendment rights, and in view of the vices of the inquisitional device, the only justification for the Oath requirement—that it may be more convenient to establish and administer than a more narrowly drawn procedure—is insufficient support for the County's choice of this means for determining employee advocacy of force and violence. Such an all-encompassing Oath could be deemed constitutional, if at all, only in the event of such an extreme emergency that constitutional standards as to reasonableness in the selection of method and reasonable balance between democratic liberties and

the needs of the State, might be abandoned. No such emergency as to threatened overthrow of the Government by County employees has been shown, or even alleged, to exist.

B. The Oath requirement is not only unconstitutional because it is an unjustifiable method of achieving the County's objective, but also because the objective taken in its full breadth itself contravenes the guarantees of freedom of belief and speech of the First and Fourteenth Amendments. In upholding the Oath as a means for the ascertainment of employees who advocate overthrow of the government by force and violence, the State Court completely ignored the doctrine that the right to free belief and expression must be preserved unless there is a showing of necessity for its curtailment in order to prevent the imminent occurrence of serious evil to the State. Under this doctrine, which must on the basis of authority and principle be held applicable to the advocacy of force and violence, the Oath cannot be deemed directed at a valid objective; for the State Court did not, any more than the County, distinguish between a theoretical belief in ultimate and distant action which could not possibly be deemed to pose any imminent danger to the State, and advocacy which might present such a menace. Instead, mere belief or expression relative to any use of force or violence to overthrow the government was deemed subject to suppression as anathema. If it be said that evils other than overthrow might be thought to result from, or coincide with, belief by government employees in even an ultimate

resort to force and violence, the answer is that no such evils have been suggested by the County; and that, in any event, if evils like inattention to duty were deemed characteristic of persons holding such a belief, concrete problems of efficiency must be dealt with by narrower measures than general suppression of belief and speech. Belief and expression *per se* cannot, as the State court seemed to believe, be used as the criterion of fitness for government employment.

C. The State Court erred in its apparent view that the Oath requirement should not be judged by the above-discussed Constitutional standards because it was imposed on government employees. The view that the State has arbitrary power, free from Constitutional limitations, to condition government employment, indubitably must be rejected in view of this Court's holdings that the grant of a privilege cannot be conditioned on the surrender of Constitutional rights. When the State conditions employment and favorable terms of employment, both obviously of substantial value, upon compliance with its requirements, it clearly is exercising compulsion, and utilizing an important sanction, to obtain such compliance. Thus, the Constitutional limitations on the State's power imposed by the First and Fourteenth Amendments are fully as applicable to the Organizations Oath requirement as if a criminal sanction, or any sanction other than penalization in employment, had been used to enforce execution of the Oath.

II.

The issue of the constitutionality of the Organizations Oath requirement was properly accepted by this Court for adjudication in the face of respondent's contention that the State court's decision rested on the non-Federal ground that no question as to the County's power to discharge its employees was ripe for adjudication. There can be no doubt that the State court intended to and did adjudicate the issue of the validity of State compulsion, by discharge or other penalization in employment, to enforce execution of the Oath; the determination of the validity of such compulsion was clearly necessary to the disposition of the cause, and a necessary basis for the State court's decision.

As to respondent's contention that no justiciable controversy is presented by this cause, the major criterion as to the existence of a controversy is clearly satisfied in the case at bar; for the issue to be here adjudicated and the remedy here required are clear, specific, and narrowly defined and are in no sense hypothetical or speculative.

Further, under established doctrine petitioner clearly has a justiciable controversy with the County because she has a real and pressing need to know whether she has a constitutional right to continue to disobey the Oath requirement or whether she must comply in order to avoid the risk of sanctions. Particularly in the light of the decision of the California courts upholding the validity of the Oath requirement, there can be no doubt as to its immediate enforcement and as to the fact that petitioner is thus immediately confronted with the necessity for sacrificing her asserted constitutional rights or risking the very serious penalty of loss of livelihood.

ARGUMENT.

I.

The County's Requirement That Its Employees Execute the Organizations Oath Is an Unconstitutional Abridgment of the Freedoms of Speech, Press, Assembly and Belief Guaranteed by the First and Fourteenth Amendments to the Constitution.

Petitioner is limiting its attack on the County's requirement that its employees execute the Organizations Oath to the ground that the requirement of an accounting and disclosure on the matters specified in the Oath is unconstitutional *per se*, without regard to the County's program for use of the disclosures. While we concede that the issue of the validity of future phases of that program may not be adequately presented in the case at bar, we believe it clear that the issue of State compulsion to execute the Oath is clearly and properly presented by the instant record (see Point II). As to this issue we do not of course deny the County's contention that it has the power to investigate its employees; we contend, however, that the Organizations Oath is unconstitutional as a method of investigation in view of the unjustifiably broad restraint it imposes on First Amendment freedoms, and the unconstitutionality of its objective in the light of the guarantees of the First and Fourteenth Amendments. After demonstrating the invalidity of the Oath requirement under established constitutional doctrine, we shall point out the error, as a matter of both precedent and logic, of the California Court's views that the State has special power, free from the usual constitutional limitations, to impose the requirement because the persons affected thereby are its employees, and that the Oath may be specially justified under the State's power to determine the fitness of its employees.

A. The Organizations Oath Requirement Is Unconstitutional Because, Even Assuming Arguendo the Constitutionality of Respondents' Objective, the Oath Requirement Is an Unreasonable Method of Achieving It.

The Oath requirement must be held unconstitutional under this Court's established doctrine that when "regulations . . . in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions" as are the First Amendment rights, this Court not only gives careful consideration to the substantiality of the alleged evil at which the regulation is directed, but also to the justification for the choice of "one rather than another means for combatting" it.[12] As we shall show the Oath effects a drastic suppression of First Amendment rights; nevertheless, under the County's own statement of the reasons for its adoption, its broad and extreme character is unjustified. It is in no sense a procedure "narrowly drawn to meet the supposed evil," and thus must fall under the basic test for the constitutionality of measures affecting the First Amendment freedoms.[13]

---

[12] *Thornhill v. Alabama*, 310 U. S. 88, 95, 96. The unanimous decision in *Schneider v. State*, 308 U. S. 147, well exemplifies this doctrine. There this Court expressed its cognizance of the need for the municipalities to keep the streets clean and prevent fraud, but held the regulation there involved unconstitutional on the basis that this objective did not justify the drastic interference with freedom of the press which the regulation caused. It was pointed out, however, that other means to achieve the same end, but creating less interference with First Amendment rights, would be constitutional. To the same effect, see cases cited *infra*, note 31.

[13] *Cantwell v. Connecticut*, 310 U. S. 296, 307. To the same effect, see cases cited *infra*, note 31.

1. THE COERCIVE EFFECT OF THE REQUIREMENT TO RENDER AN ACCOUNTING TO THE STATE OF ASSOCIATIONS AND BELIEFS.

The first question before this Court in adjudging the constitutionality of the Organizations Oath is "how much, as a practical matter, . . . (it) would affect liberty of expression." *Bridges v. California*, 314 U. S. 252, 268.[14] It cannot be doubted that the effect of the Oath requirement is to coerce County employees and potential employees not to engage in the associations or beliefs about which they must thereunder render an accounting and disclosure to the State. This Court has taken full cognizance of the restraint the State imposes upon First Amendment freedoms when it requires submission to an inquisition as the condition of their exercise. Thus, with respect to the distribution of religious pamphlets, this Court declared that mere submission to "a burdensome and inquisitional examination," and to "the officer's discretion" as to whether or not pamphlets could be distributed, regardless of whether the discretion was exercised in the applicant's favor, "makes impossible the free and unhampered distribution of pamphlets (and) strikes at the very heart of the con-

---

[14]For, "In every case . . . where legislative abridgment of the rights (protected by the First Amendment) is asserted, the courts should be astute to examine the effect of the challenged legislation." *Schneider v. State*, 308 U. S. 147, 161. To the same effect, see *Martin v. Struthers*, 319 U. S. 141, 144; *Thornhill v. Alabama*, 310 U. S. 88, 97.

The effects of the Oath requirement which petitioner will herein discuss are those which *necessarily* result from its imposition and thus render it unconstitutional upon its face, rather than those which may arise from its application to particular facts of individual cases. Petitioner undoubtedly can raise the question of the requirement's unconstitutionality upon its face, because she is one of those directly affected by it, as well as because of the particular attention given in First Amendment cases to this type of unconstitutionality. Compare *Cantwell v. Connecticut*, 310 U. S. at pp. 308, 311; *Thornhill v. Alabama*, 310 U. S. at p. 97; *Thomas v. Collins*, 323 U. S. 516, 531; *Murdock v. Pennsylvania*, 319 U. S. 105.

stitutional guarantees" (*Schneider v. State*, 308 U. S. at p. 164). And see *Murdock v. Pennsylvania*, where the dissenting Justices, though disagreeing with the majority view that the tax there involved abridged freedom of the press and religion, defined freedom as "a privilege to print or pray . . . without accounting to authority for one's act" (319 U. S. 105, 122).[14a]

For subjection to an inquisition is essentially the same in nature and in its restraining effect as subjection to censorship, which it was the major purpose of the First Amendment to prohibit.[15] Like censorship it is a submission of thought, speech, or association to official scrutiny and possible disapproval and, like censorship, its evil effect lies in the "pervasive threat" of official disfavor.[16] *Thorn-*

[14a]Justices Roberts, Frankfurter, and Jackson joined in a dissent by Mr. Justice Reed. Compare *Electric Bond and Share Co. v. S.E.C.*, 303 U. S. 419, 441, where this Court assumed without question that freedom from the requirement of disclosure of business data was a constitutional right and that such a requirement was unconstitutional unless reasonably related to a constitutional objective.

[15]*Near v. Minnesota*, 283 U. S. 697, 713.

[16]In the case of the County's Oath it is to be noted that there is not only the implicit threat inherent in every inquisition that disclosures may be used to the citizen's detriment, but that the County has explicitly asserted its power to so use them. Regardless of the precise effect to be given to disclosures, the County has stated that they are to be used in a determination of whether the citizen is "subversive"; and the wording of the Oath with its citations of the Tenney reports, indicates the County's viewpoint, even aside from the County's declarations. Moreover, the citizens upon whom the requirement of disclosure is imposed are a group who have special reason to fear adverse appraisal by the County since it has direct control over their employment. And the fact that the disclosures are to be appraised on the basis of such a meaningless standard as "subversive," a term which indeed has no more exact meaning than that the belief is indignantly condemned as inconsistent with a belief held to be important by the condemnor [see Clark, J., dissenting, in *Josephson v. United States*, 165 F. 2d 82, 96 (C. A. 2d, 1947) (cert. den. 68 S. Ct. 609), as to the vagueness of this term] intensifies the coercive effect of the accounting requirement, for the citizen is laid open to a completely arbitrary condemnation of his beliefs.

The fact that the Oath is administered by executive officers who have the power to act against individuals of course distinguishes this accounting from any that might be legislatively required.

hill v. Alabama, 310 U. S. at p. 98. For "the power of the licensor . . . is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern" (*ibid*); it is this threat which, generating efforts to escape the potential impact of the State's disapproval, coerces conformity to the censor's standards and suppresses freedom of expression. And it is precisely in the same manner that the County's Organizations Oath requirement restrains First Amendment freedoms. It cannot be doubted that the citizen is deprived of freedom of choice in his associations and beliefs when he lives under the realization of his liability to account for them to the State; the realization exercises a constraint upon him to direct his activities and beliefs into channels which are likely to be approved. An inquisition is thus particularly effective as a restraint upon adherence to minority political or social views, which are the focus of the Organizations Oath; the mere exposure of the fact that one possesses such views is cause for apprehension, and in their regard "no one denies that the inquest is an effective instrument of restraint."[17]

2. Breadth of Effect of Organizations Oath Requirement.

As to the extent of the area over which the Oath restrains freedom of assembly, as well as the freedoms of speech, press and belief, which as we shall show below are also involved, it is not an exaggeration to say that the

---

[17] Judge Edgerton dissenting in *Barsky v. United States*, 167 F. 2d 241, 260 (App. D. C., 1948), cert. den. 68 S. Ct. 1511. Compare *Utah Fuel Co. v. Bituminous Coal Commission*, 306 U. S. 56, 60, where a requirement to disclose business data was enjoined; compare also *Indianapolis Power & Light Co. v. National Labor Relations Board*, 122 F. 2d 757, 760 (C. A. 7th), cert. den. 315 U. S. 804, and *Botany Worsted Mills v. N.L.R.B.*, 106 F. 2d 203, 207 (C. A. 3rd), where employer interrogation of employees as to union membership was deemed an obvious and flagrant coercion of them not to join the union.

coercive effect of the Oath extends to virtually all social, economic and political issues.[18] The list of organizations about which an accounting must be rendered covers practically all subjects of current or recent public interest; as to all public issues, therefore, the employee must guard his position in the light of his accountability to the State. And no type of organization is exempt: the list includes all types, from youth organizations to trade unions to political parties. This dragnet list of organizations is based on their "mention" by the Tenney Committee, no matter how casual or ill-considered that mention might have been (see *supra*, Statement of Facts, pp. 4, 6-12). And it is to be noted that despite the Committee's casualness in its charges and conclusions, none but 3 or 4 of the 144 organizations on the List were even alleged or indicated by the Committee either to overtly or covertly advocate forceful overthrow of the Government or promotion of any other unlawful objective (Statement of Facts, *supra*, p. 12). Furthermore, the County itself concedes that the list includes organizations which must be presumed to be entirely devoted to their declared civic aims, for it states that some were mentioned merely because "subversive or Communistic organizations were endeavoring to place (them) . . . under their influence" [S. 16].

Moreover, no type of contact with the organizations is free from the disclosure requirement. The inquisition

---

[18]While there is no subject of expression or thought which will escape the suppressive effect of the Oath, its especial emphasis on political questions means that the First Amendment freedoms will be restrained in their most important respect. See *Winters v. New York*, 333 U. S. 507, 517, 518. For the primary purpose of the constitutional guarantees of free speech is that "government may be responsive to the will of the people and that changes may be obtained by lawful means." *Stromberg v. California*, 283 U. S. 359, 369; *DeJonge v. Oregon*, 299 U. S. 353, 365; *Terminiello v. Chicago*, 337 U. S. 1.

penetrates to support, even "indirect," and "following" of the organizations; and though the citizen is completely innocent even of knowledge of whatever might be deemed "subversive" about the organizations, as the Tenney Committee admitted was true even of many of their important associates (see references cited in Statement of Facts, *supra*, p. 8), he does not escape the obligation to account. One final aspect of the Oath is to be noted: the required accounting covers one's entire lifetime. This feature undoubtedly contributes greatly to the restraining effect of the Oath upon freedom of association; for the citizen cannot undertake an association without assuming the risk of having to disclose it to the State in the indefinite future and under unpredictable circumstances or changes of fortune. In sum, the Organizations Oath deprives the employee of freedom to associate with organizations which are covertly as well as overtly, in good faith and unreservedly, devoted to a lawful and public-spirited purpose, and even though his association with them is solely for that purpose.

The effect of the Oath requirement would undoubtedly extend further than to the deterrence of association merely with the listed organizations. It is safe to say that validation of the Oath would deter belief in or association with all organizations, including, especially, new movements, and even informal discussion groups. Clearly there can be no sense of assurance that *any* organization might not be included in the County's list, judging from the broad sweep of the present list, and the County's own declaration that it has included organizations without so much as attempting to ascertain whether or not they fitted even the loose standard of "subversive." Thus, like other poorly circumscribed exercises of power affecting First Amendment freedoms, the power expressed in the Oath require-

ment "blankets with uncertainty," and thus impairs, the right to participate in any type of assembly. *Thomas v. Collins*, 323 U. S. 516, 535.[19] The State's power here asserted is of such breadth that it "offers . . . security" (*ibid*) only through abstinence from associations other than those explicitly approved by the County.

It is clear, too, that the deterrent effect of the Oath upon the free exercise of the right of assembly is not limited merely to present County employees but extends, though in a lesser degree, to all potential County employees, and thus to a substantial portion of the citizenry of the County.[20] Even the freedom of adolescents and youths is affected, for the County asserts the right to require an accounting of membership in high school and college associations (see Statement of Facts, *supra*, p. 4); those

---

[19]See also *Saia v. New York*, 334 U. S. 558, 562, and cases there cited: *Cantwell v. Connecticut*, 310 U. S. at p. 307; *Winters v. New York*, 333 U. S. at pp. 509-10; *Carlson v. California*, 310 U. S. 106, 112. For like a broad penal statute which "sweeps within its ambit . . . activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press," the existence of a measure based on a broad assertion of power "which readily lends itself to . . . enforcement . . . against particular groups deemed to merit . . . (official) displeasure results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective than the restraint on freedom of discussion imposed by the threat of censorship." *Thornhill v. Alabama*, 310 U. S. at pp. 97-8. The pervasive effect of the power asserted in the Oath requires this Court's consideration in determining whether the Oath unconstitutionally invades First Amendment freedoms to the same extent as the immediate effect of the existent Oath list. *Ibid.*

[20]As the Supreme Court of California declared in disapproving the requirement of an oath of non-subversiveness as a condition for the holding of meetings in public schools: "Its principal effect is to discourage certain convictions and affiliations" on the part of all who may wish to hold such meetings. *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, 564.

who foresee the possibility of needing to seek County employment must have an eye for State inspection of their associations from the inception of their sentient years. Indeed, validation of the Oath requirement would result in the curtailment of the liberties of the entire citizenry, for it would inevitably cause apprehension of its extension to other employments where its use could be justified on similar grounds to those herein advanced respecting County employees.[21]

Range of First Amendment freedoms affected by the Oath—The Organizations Oath impairs the free exercise of the right to assembly not only by virtue of the coercive effect of its requirement to account for contact of any sort with the interdicted organizations; in addition, its heavy reliance on the doctrine of guilt by association, both in its basic justifying premise that association is evidence of individual culpability and in its listing of organizations which were "mentioned" by the Tenney Committee solely because of tenuous inferences from associations,[21a] is another forceful deterent to assembly. For the obligation of answering for the beliefs of one's associates is a burden which cannot but hinder and suppress the free exercise of the right to assemble. Furthermore, the imputation of guilt from association likewise affects the right to free

---

[21]Compare *O'Brian*, Loyalty Tests, 61 Harvard Law Rev. (1948) 592, 608; Judge Edgerton dissenting in *Barsky v. United States*, cited *supra*, note 17, at p. 255. See *Ex parte Cummings*, 4 Wall. 277, and *Ex parte Garland*, 4 Wall. 330, where this Court condemned the post-Civil War imposition of loyalty Oaths upon numerous professions, including teaching, preaching, and practising law; the dissenting Justices considered the Oath particularly justifiable for practitioners before this Court (4 Wall. at p. 386).

[21a]See discussion in *Bridges v. Wixon*, 326 U. S. 135, 143-148, of the unfairness and unpersuasiveness of such inferences in relation to "Commun..." associations.

speech. As this Court by Chief Justice Hughes, with only one dissenting vote, said in the *DeJonge* case:

> "The question, if the rights of free speech and peacable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."
>
> *DeJonge v. Oregon*, 299 U. S. 353, 365.

Indeed, to the extent that the Oath requirement impairs freedom of assembly, there is a *pro tanto* impairment of freedom of speech and press. For the "rights to freedom in speech and press . . . with the rights of the people peaceably to assemble and to petition for redress of grievances . . . are inseparable" (*Thomas v. Collins*, 325 U. S. at pp. 530-1) and "cognate" (*DeJonge v. Oregon*, at p. 364). The right to free speech requires for its fulfillment the right to assemble so that the speaker may have the "opportunity to persuade to action" (*Thomas v. Collins*, at p. 537). Clearly, the restraint upon a citizen's right to assemble in organizations dealing with rent control,—to take one example from the Oath list—is likewise a restraint upon his freedom to speak or publish on the subject of rent control or to petition for a redress of grievances with regard thereto, for he cannot be deemed to express himself freely if he cannot do so to an audience of like-minded persons nor is his expression free if he cannot make it effective through joining in movements with his fellows.

Furthermore, freedom of the press is directly impaired by the Oath in that the County asserts the power therein

to hold the citizen accountable for his reading matter. The inclusion of the Daily Worker and the New Masses on the Oath list not only means that the employee is forced to close his eyes to whatever light on controversial issues may be found in these Communist publications, but also that in all his selections of reading matter he must bear in mind his possible accountability therefor.[22]

While the impairment of freedom of assembly, speech, and the press may be most obvious effects of the Organizations Oath, even more significant than these is its effect on freedom of belief. For freedom of belief is the most sacrosanct right in our constitutional system; it is "absolute";[23] "the spheres of intellect and spirit" are to be reserved "from all official control."[24] These spheres are clearly invaded by the County's inquisition into belief and influence on belief by requiring disclosure of what organizations have been "followed." Furthermore, just as a restraint on freedom of assembly may impair freedom of speech (see cases cited *supra*), the fact that the Oath requires an all-encompassing confession to the State of associations relating to the expression of unorthodox views would tend to suppress belief in such views. This tendency is strengthened by the circumstance, which we discuss below, that the inquisitional method of the Oath is traditionally used and peculiarly adopted to forcing a disclosure of beliefs.

---

[22]The right to read and support newspapers and magazines to the end that they may be published and circulated is clearly part of the right to freedom of the press. *Martin v. Struthers*, 319 U. S. 141, 143.

[23]*Cantwell v. Connecticut*, 310 U. S. at p. 303.

[24]*Board of Education v. Barnette*, 319 U. S. 624, 642. See *United States v. Ballard*, 322 U. S. 78, 86-7: "Freedom of thought . . . is basic in a society of free men."

3. PERNICIOUS CHARACTER OF INQUISITIONAL PROCEDURE FROM STANDPOINT OF FREEDOM OF BELIEF AND INDIVIDUAL SECURITY.

Not only should the Oath be invalidated because of its "affect" "as a practical matter" on First Amendment freedoms,[28] but also because its inquisitional procedure is, like censorship, to be condemned *per se* as an outlawed procedure under the First Amendment. For, like censorship, inquisition embodies particular and peculiar dangers for First Amendment freedoms; while a man's words or actions may be variously ascertained, it is only through inquisition that the recesses of his mind may be searched, and the sacred "spheres of the intellect and spirit" be invaded. Here the County has indeed used the Oath for the very purpose which has made it feared and condemned: by forcing disclosure of what organizations have been "followed," it seeks to ascertain belief and influence on belief,—facts which could only be ascertained by inquisition. As in the *Cummings* case in which a Test Oath for State employees was condemned, "the oath is directed not merely against overt and visible acts of hostility to the government, but is intended to reach words, desires, and sympathies, also" (*Ex parte Cummings*, 4 Wall. 277, 318). While possession of the sympathies at which the inquisition is directed is not here, as it was in the *Cummings* case, a conclusive disqualification for employment, the Oath requirements are fundamentally the same for in both instances the State has imposed as a condition of employment the requirement that employees submit to an inquisition revealing their associations and sympathies. See

---

[28] *Bridges v. California*, loc. cit. *supra*, p. 22.

also *Ex parte Garland*, 4 Wall. 333, 377. Indeed, the County's Oath establishes a broader inquisition than that in the *Cummings* case, for in the latter the subject-matter was limited to connection or sympathy with the Confederacy whereas here the employee is not subjected merely to a few interrogations. Rather the inquisitional oath is here found in its full fruition: for a searching and thorough canvass of activity or sympathy over an all-inclusive range of social, economic, and political issues.

The County's Oath embodies another feature of the *Cummings* oath, which was a major cause of its condemnation by this Court as being "for its severity without any precedent that we can discover" (at 318). For the County's Oath, like the Cummings Oath, "is restrospective; it embraces all the past from this day; and, if taken years hence, it will also cover all the intervening period". (at p. 318). The indefinitely retrospective feature of the County's Oath contributes strongly, as we have already noted, to its suppressive effect on freedom of expression; for it means that there is no terminal point for one's liability to account to the State for one's beliefs and associations.

Principles of Individual Security.—The inquisitional Oath not only strikes at the sacrosanct position in our law of freedom of belief, but also is contradictory to basic principles of individual security. This Court has recently declared that the "security of one's privacy" against invasion by an unreasonable search "is basic to a free society."[20] Certainly the privacy of one's beliefs and their

---

[20] *Wolf v. Colorado*, 338 U. S. 25. The due process clause of the Fourteenth Amendment was therefore held to incorporate protection against unreasonable search and seizure. Compare *Brinegar v. United States*, 338 U. S. 160, where the search did not involve a place of privacy.

protection against an indiscriminate and unfounded ransacking by inquisition is as important a part of such security as the privacy of one's residence.[27] Cognate to protection against unreasonable search is the principle of the presumption of innocence. As this Court pointed out with severe condemnation in the *Cummings* case, the inquisitional oaths there used "subvert the presumption of innocence"; "they assume the parties are guilty; they call upon the parties to establish their innocence" (4 Wall. at p. 331). The County Oath requirement is likewise based on such a subversion of the presumption; while the County's view is alleged to be that only some of the County employees are "subversive," the imposition of the Oath on each individual employee is necessarily premised on the presumption that he may be one of the guilty ones, and should therefore be called upon to take the first step in establishing whether or not he is guilty. And in that the inquisition compels the employee to speak, it may well be a harsher measure than a prohibition of speech as to the same matters. Particularly with respect to opinions and associations of a minority nature, where the right to speak only at a time and place of one's own choosing is of particular value, is this Court's statement apposite: "It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence" (*Board of Education v. Barnette*, 319 U. S. at p. 633).

A third corollary doctrine of individual security: protection against self-incrimination—is also undermined by the Organizations Oath. In the *Cummings* case this Court

---

[27]Compare *Sinclair v. United States*, 279 U. S. 263, 292; *Jones v. S. E. C.*, 298 U. S. 1, 28.

pointed out as one of the pernicious effects of a citizen's being forced to disclose information against himself by an inquisitional Oath that the result of this procedure was "to excite scruples in the honest and conscientious, and to hold out a bribe to perjury."[28] This unfair burden, resulting from violation of the protection against self-incrimination is aggravated in the case at bar by the obscurity of the language of the Oath, which forces the employee to choose between the possibility of a charge of misrepresentation for incomplete disclosure or unnecessary self-accusation for error in the other direction.[29]

---

[28]At page 331. The self-incriminating aspect of the oath was the basis for the condemnation by the Supreme Court of Pennsylvania of an oath with respect to allegiance during the Revolution, required shortly after the Revolution as a condition for voting. *Respublica v. Gibbs*, 3 Yates 429, discussed by Field, J., dissenting in *Brown v. Walker*, 161 U. S. 591, 633. Compare *United States v. Collins*, 25 Fed. Cas. 545, 549-550 (No. 14837), C. C., S. D. Ga., 1873, where the Court refused to compel the testimony of a jury official whose selection of the jury was being challenged. The Court based its ruling on the ground that "Where a charge of misconduct is made against an officer, whether amounting to an indictable offense, or only to his discredit as such officer, which might furnish grounds for his removal or impeachment, he is not bound to be a witness against himself . . . An inquisitional examination, under oath, of a party charged with an offense, is repugnant to the principles of personal liberty . . ."

[29]The requirement of revealing what organizations were "followed" "requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connolly v. General Construction Co.*, 269 U. S. 385, 391. Such a burden is so unfair as to contravene due process of law. *Ibid.* Compare *Lanzetta v. N. J.*, 306 U. S. 451, 453; *Musser v. Utah*, 333 U. S. 95; and as to the effect of vagueness in measures affecting free speech, *Winters v. New York*, 333 U. S. 507 at pp. 509-510.

4. UNCONSTITUTIONALITY OF COUNTY'S USE OF ORGANIZATIONS OATH AS A METHOD OF ACHIEVING ITS OBJECTIVE.

As we have already noted (*supra*, p. 21), it is the firmly established doctrine of this Court that in the case of measures affecting the free exercise of First Amendment rights, the measure must not only be constitutional in its objective but also must employ means to achieve the objective that are justifiable when full account is taken of their effect on freedom of expression. Under this doctrine we submit that the Oath requirement is unconstitutional. For, assuming arguendo that there was justification for an investigation of whether any County employees advocated forceful overthrow of the Government, the County's adoption of the Organizations Oath, with its drastic and sweeping impairment of First Amendment freedoms by a procedure peculiarly obnoxious to the principles of freedom of belief and individual security, was unreasonable.

The County's own statement in justification of the adoption of the Oath is merely that it is "*a* practical approach" to its problem [S. 16]; and there is no indication in the County's argument that it could not have used a method for achieving its objective which would have effected a lesser interference with First Amendment freedoms. In the face of this statement and the flagrantly broadside nature of the inquisition, it is obvious that methods less deleterious to the First Amendment freedoms

could well have been used.[30] Clearly the requirement for all County employees to execute this all-encompassing Oath was not a procedure "narrowly drawn to meet the supposed evil," and thus must fall under the basic test for the constitutionality of measures affecting the First Amendment freedoms.[31] The County obviously made no such deliberative effort to leave room for the free exercise of First Amendment rights as might conceivably furnish justification for the imposition of the Oath. And even if other methods of dealing with the problem might be "less efficient and convenient, considerations of this sort do not empower a municipality to abridge" the First Amendment freedoms. *Schneider v. State*, 308 U. S. at pp. 162, 164. To the same effect: *Cantwell v. Connecticut*, 310 U. S. at p. 307; see also *Thomas v. Collins*, 323 U. S. at 530, 547; *Martin v. Struthers*, 319 U. S. 141, 147.

We deem the holding of these cases precisely in point in the instant case, for at best the County's justification for its drastic and all-pervasive encroachment on the First Amendment freedoms is that it is easier to use the Oath

---

[30]The burden clearly is not upon us to delineate such alternative methods in detail. *Cf. Thornhill v. Alabama*, 310 U. S. at p. 98.

[31]*Cantwell v. Connecticut*, 310 U. S. 296, 311.

Similarly, in condemning the statue involved in the *Thornhill* case, this Court said that the measure "does not aim specifically at serious encroachments on these interests and does not evidence . . . care in balancing these interests against the interest of the community and that of the individual in freedom of discussion on matters of public concern." *Thornhill v. Alabama*, 310 U. S. at p. 105. *Semble: Winters v. New York*, 333 U. S. 507, 509, 512; *Saia v. New York*, 334 U. S. 558, 562, 564; *Murdock v. Pennsylvania*, 319 U. S. 105, 116; *Schneider v. State*, 308 U. S. 147, 162.

than other and more precisely circumscribed methods for meeting its objective. Such a drastic procedure as the Oath could be deemed constitutional, if at all, only in the event of such an extreme emergency that constitutional standards as to reasonableness in the selection of methods, and as to a reasonable balance between democratic liberties and the need to preserve the State, might be abandoned.[32] No such emergency with respect to overthrow of the Government by County employees has been shown, or even alleged, to exist. It was not justifiable for the County to restrain expression, belief, and assembly with respect to all minority views and all current social, economic and political issues, in order to discover and suppress the advocacy of force and violence, even if this objective were justifiable.[33] The California Courts in holding the Oath constitutional as a means to this end wholly ignored its excessive breadth.

5. Invalidity of Oath Because It Imposes Restraint Directly Upon First Amendment Rights.

The County's constitutional obligation to utilize a method other than the Oath for achieving its alleged objective also stems from the circumstance that the restraint the Oath effects lies directly on First Amendment rights. For the County has not argued that association with the listed organizations is wrongful; indeed, it concededly has devised the Oath on the basis that association with at least some of the organizations may be entirely blameless

[32] *Cf. Hirabayashi v. United States*, 320 U. S. 81; compare *Brinegar v. United States*, 338 U. S. 160.

[33] The instant case is clearly distinguishable from *United Public Workers v. Mitchell*, 330 U. S. 75, cited by the California Courts [P. 60, 62-3]. There the measure had no such sweeping effect on First Amendment freedoms as here appears, nor was there a glaring failure, as in the instant case, to deal with the alleged evil on a narrow basis.

[S. 16]. Accordingly, it is clear, even without adverting to the necessity for presuming the lawfulness of association with organizations of worthy public purposes in the absence of a showing to the contrary, that association with at least some of the listed organizations is a right under the First Amendment, and could not conceivably be deemed an abuse of the right. Thus, the restraint effected by the Oath's requirement to account and disclose lies directly upon guaranteed rights under the First Amendment. And considering that the Oath requirement in reality restrains liberty of expression, belief, and association with respect to all political, social and economic views or issues of an unorthodox nature (see *supra*, pp. 26-27, 28-30), the effect of the Oath on the guaranteed rights is greatly magnified.

The fact that the Oath imposes a condition directly upon the exercise of First Amendment rights in itself renders it invalid. For even in times similar to the present in that there were wholesale attempts to get at "subversives," this Court held that governmental "intervention can find constitutional justification only by dealing with the abuse (of First Amendment rights). The rights themselves must not be curtailed . . ." (*DeJonge*, 299 U. S. at 364-5). Accordingly this Court has condemned requirements which conditioned the exercise of First Amendment rights, for this reason alone and without regard to the degree of oppressiveness of the conditions. Thus it disapproved even the formal requirement of registration, without considering whether or not it would in practice restrain speech, when the requirement was imposed as a prerequisite for the expression of speech which could not be prohibited as wrongful.[34] Similarly, a license tax, regardless

[34] *Thomas v. Collins*, 323 U. S. 516.

of whether it was nominal or oppressive in amount, was invalidated because it was imposed as a requirement for the distribution of religious literature; since such distribution is a right under the First Amendment and cannot be prohibited, it cannot be conditioned.[35] And if an "activity bears . . . (a) necessary relation to the freedom to speak, write, print or distribute information or opinion," it may not be curtailed even by a police measure regulating its place of exercise, even "on the plea that it may be exercised in some other place." *Schneider v. State*, 308 U. S. at pp. 161, 163.[36]—It cannot be doubted that the activity restrained by the County's requirement to account bears a "necessary relation" to the First Amendment freedoms. There is no conceivable substitute in the fulfillment of the First Amendment freedoms for the freedom to associate, speak, and believe with respect to minority views which is restrained by the Organizations Oath.

* * * * * * * * *

Thus the Oath must be invalidated as an unconstitutional method of achieving the County's objective, even if the validity of the latter be assumed *arguendo*, because of the unjustifiably broad restraint it imposes on First

---

[35] *Murdock v. Pennsylvania*, 319 U. S. 105.

[36] At the most, and where the activity does not bear such a necessary relation to First Amendment freedoms, the exercise of First Amendment rights may be regulated only to the extent of reasonable police or health measures as to time and manner of exercise. Thus in speaking of the freedom to distribute information, this Court declared that such freedom "is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." *Martin v. Struthers*, 319 U. S. 141, 146-7. See also *Schneider*, 308 U. S. at p. 164; *Cantwell*, 310 U. S. at p. 307; *Saia v. N. Y.*, 334 U. S. 558. The drastic suppression resulting from the County's accounting requirement cannot be deemed to fit the exception of a mere regulation of the time or manner of exercise of the vital freedoms involved.

Amendment rights, by a procedure which itself constitutes an invasion of such rights and of principles of individual security, and because it imposes a condition and restraint directly upon First Amendment rights.

B. The Fact That the Persons Required to Take the Oath Are Employees of the County Does Not Render It Constitutional.

The County's argument, in part adopted by the State courts [P. 51-52, 56], that the Oath requirement cannot be deemed unconstitutional because the County may condition County employment as it sees fit, is wholly untenable under the decisions of this Court. The fact of Government employment may of course be relevant, as a fact, to the constitutionality of the suppression of advocacy of force and violence; that is, for example, there may be a clear and present danger from such advocacy by Government employees when such advocacy by other persons under circumstances otherwise the same might not pose an equal danger. But it is clear under the decisions of this Court that insofar as questions of constitutional law are concerned, there is no special standard for the constitutionality of measures affecting Government employees, and the same standards must be applied in the appraisal of the facts adduced in justification of such measures as of measures affecting other groups.

In the recent decision of *United Public Workers v. Mitchell*, 330 U. S. 75, cited by the State Courts [P. 62], this Court, while upholding the regulation of Government employees there involved, based its decision on the regulation's validity under the usual constitutional limitations and standards, and stated explicitly that it could not be deemed valid on a theory of the Government's unlimited power to condition employment (330 U. S., at p. 100).

The argument that the Government is not limited by the Constitution with respect to regulations of its employees and that its measures are within its arbitrary discretion so long as they are limited to this class, is claimed to have a theoretical basis in the fact that the State is not obliged to afford Government employment. But this Court has now repeatedly held that the State cannot extend its powers past their constitutional limitations by the grant, and then conditioning, of privileges; it cannot condition privileges on the surrender of constitutional rights. (*Wheeling Steel Corp. v. Glander*, 337 U. S. 562, 571; *Hannegan v. Esquire*, 327 U. S. 146, 156; *Marsh v. Alabama*, 326 U. S. 501, 504; *Jamison v. Texas*, 318 U. S. 413, 415; *Hague v. C.I.O.*, 307 U. S. 496, 514-516; *Mo. ex rel. Gaines v. Canada*, 305 U. S. 337, 349; *Frost v. R. R. Comm. of Calif.*, 271 U. S. 583.[37]) With the expansion of governmental functions, the conditioning of governmentally-granted privileges has become an increasingly powerful sanction; if the State could use this sanction outside of the Constitution, it could impose arbitrary restraints on the greater part of the population.[38]

---

[37] See also the decision of the California Supreme Court in *Danskin v. San Diego Unified School District*, 28 Cal. 2d 536, 171 P. 2d 885 (1946). And see Justice Brandeis dissenting in *United States ex rel. Miuwaukee Social Democratic Publishing Co. v. Burleson*, 255 U. S. 407, 430-1, and pointing out that the Government's denial of mailing privileges to a paper because of views expressed therein, "would prove an effective censorship and abridge seriously freedom of expression." See also Frankfurter, *Mr. Justice Holmes and the Supreme Court* (1938), p. 57, commenting on Mr. Justice Holmes' view in the *Burleson* case as one which "brushed away this web of unreality" of "treating postal facilities as a privilege."

[38] The power to condition Government employment alone affects approximately 5,900,000 persons, the total employed by either Federal, State or local governments as of July 1948; this number comprised about one-tenth of the total employed population of the country. *Survey of Current Business*, Department of Commerce, Bureau of Census, for July, 1948.

This Court's decisions thus destroy the theoretical basis in terms of "privileges" for the argument that the State may impose whatever conditions it wishes on its employees.[39] Pragmatically, this Court has recognized as far back as the *Cummings* and *Garland* cases (discussed *supra*, pp. 31-32), and as recently as the *Lovett* case,[40] that public employment is of such value that its deprivation constitutes a punishment as, or more, severe than a criminal penalty. Accordingly, for the State to condition employment or beneficial treatment in employment on compliance with certain requirements means that the State is imposing a sanction to coerce compliance with such requirements which is as effective as imposition of a fine or imprisonment.[41] Thus, in the instant case, if a requirement to take the Oath is unconstitutional because, as we contend, it does not meet the test of reasonableness of method (*supra*, Point A) nor the test of justification by a clear and present danger (*supra*, Point B), then the State is exerting compulsion for an unconstitutional purpose when it requires the citizen to take the Oath on pain of sacrificing employment or favorable terms of employment.

In sum, we submit that the decisions of this Court irrefutably dictate the rejection of the argument that the

---

[39]See *People v. Crane*, 214 N. Y. 154, 108 N. E. 427, affirmed 239 U. S. 195, where Justice Cardozo emphatically rejected this argument for the New York Court of Appeals. Compare *Truax v. Raich*, 239 U. S. 33, where a State law requiring a denial of private employment was held unconstitutional. Though there was no right to such employment, State action causing its denial was subject to the same constitutional safeguards as other State action.

[40]*United States v. Lovett*, 328 U. S. 303. Compare *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10, discussing the equivalent gravity of deportation with a criminal penalty.

[41]There is no more analogy between the power of a private employer or association [P. 52, 56-7] to impose conditions on its employees and that of the State, than there is between the State's and a private individual's power to impede interstate commerce, impose racial discrimination, or act in disregard of any of the other constitutional limitations which apply to State and not to private action.

Organizations Oath can be held valid on the basis that the State can disregard constitutional limitations in the regulations it imposes on its employees.

Lack of Justification for Oath as an Exercise of the Power to Determine Fitness for Employment.

Another view, in addition to that respecting the State's unlimited power to condition employment, which seemed to influence the California Courts to ignore the usual constitutional standards for restraints on free expression, was the view that the Oath was justifiable as a means of determining a person's fitness for County employment [P. 56]. We do not of course quarrel with the power and duty of the County to determine the fitness of its employees.[42] But the Organizations Oath can not be justified as an exercise of this power.

To first consider the question of fitness if the disclosures required by the Oath are taken on their face: unorthodoxy in associations and opinions and the espousal of minority views, which the Oath uncovers, cannot reasonably be deemed to render one unfit for County employment nor can the State enforce political orthodoxy on any group of its citizenry. And considering the Oath as a measure for discovering advocates of force and violence, it is clear that even if such measures could be deemed reasonable exercises of the power to determine the fitness of employees, the Oath would, nevertheless be un-

---

[42]Holmes' famous dictum in the *McAuliffe* case (quoted by the State court [P. 52]), may only have meant, and can be reconciled with the doctrines of this Court on the basis, that the conditions he was discussing in fact bore a reasonable relation to fitness and efficiency. Compare with the *McAuliffe* opinion, Mr. Justice Holmes' disapproval in *Milwaukee Publishing Co. v. Burleson*, 255 U. S. 407, 437, of the majority's reasoning with respect to the withdrawal of postal facilities.

constitutional on the ground that it effects a restraint of free expression which is unjustifiably broad for the purpose of determining advocacy of force and violence (*supra*, pp. 35-37). Indeed, however, the Oath considered as a means of determining advocacy of force and violence bears no greater relation to the fitness of employees than if it is considered as a means of determining orthodoxy of opinion. To say that the employee impliedly covenants not to so advocate [P. 55] is merely to beg the question; if the condition of non-advocacy cannot constitutionally be imposed it cannot be either an express or implied covenant.

Belief and speech which is not an evil does not become an evil merely because it is held and expressed by a group of citizens whose employment is in the government. Obviously the liberty of expression of government employees can be suppressed by a regulation such as one prohibiting disruption of work by speech-making, for the prohibition on such conduct is reasonably related to the objective of efficiency. But mere advocacy of forceful overthrow of the government—mere belief and speech in favor of such overthrow,—without any expression in conduct, cannot render an employee unfit; in the absence of the manifestation of such advocacy in conduct, a barrier against employees who so advocate is in reality only a suppression of speech imposed on a part of the citizenry under the guise of a requirement of fitness. By virtue of government employment the citizen does not deliver his constitutional rights into the hands of the Government; and when a requirement is imposed on government

employees because of its alleged relation to their fitness, the courts cannot fail, any more than if a regulation were imposed on any other occupational group in the name of its special relation to the public welfare, to inquire whether it in fact bears a reasonable relation to the alleged objective.

As to the possibility of conduct resulting from advocacy of overthrow of the government, the respondents suggested that County employees impliedly covenant not to destroy their employer (Brief in Opposition to Petition for Certiorari, p. 33); it could equally well be said that every citizen impliedly covenants not to destroy the government. The government's need to protect itself against its overthrow is universal, against all who make such an attempt; it can no more permit itself to be overthrown by non-employees than by employees. Similarly, the need to protect liberty of expression exists with respect to the entire citizenry. Thus employees cannot be distinguished from non-employees with respect to the question of when suppression of expression becomes constitutionally permissible as a means of preventing overthrow of the government.[43] The fact of whether those advocating overthrow of the government are employees is relevant to whether the advocacy creates a clear and present danger of overthrow; but there is no logical basis for abandoning the clear and present danger test when government employees are involved.

---

[43]As to the possibility of evils other than overthrow of the government resulting from advocacy of force and violence, see *infra*, note 48. While we urge that a person's belief cannot be deemed the ultimate fact showing his fitness or unfitness for government employment, it would seem that his beliefs could be used as an indication, absent more direct evidence, of whether he was likely to engage in inappropriate *conduct*.

The position that government employees have a special duty not to believe in force and violence would seem to stem in part from the view that gratitude for their livelihood should make them eschew such a belief [see P. 57]; but, stripped of its emotional overtones, this view is merely an embodiment of the discredited theory (pp. 46-49, *supra*), that one who receives privileges from the government may therefore be deprived of constitutional rights—here the right to freedom of belief and expression.

The decision of this Court in *United Public Workers of America v. Mitchell*, cited by the California Court [P. 62] seems of little pertinence. The measure there upheld, —a prohibition of "partisan" political activity,—was upheld on the basis that such conduct had long been considered, and might reasonably be deemed, to interfere with governmental efficiency. No such question is presented here. Furthermore, the Court emphasized that only a narrow restraint on speech was there involved (330 U. S. at p. 100); the measure was drawn to meet a specific evil relating to efficiency and was not subject to attack as is the instant case, as an all-pervasive invasion of free expression.

Finally, it is to be noted that the alleged justification of the Oath in terms of a means for determining "fitness," would apply to numerous other occupations and professions as well as to County employees. Thus, in enacting the measures in issue in the post-Civil War *Cummings* case (*supra*, pp. 31-2), it was thought that "loyalty" was especially required for members of the Bar. And at present Loyalty Oaths, inquisitions, and investigations are in progress to determine "fitness" of

numerous groups and professions."[44] Thus, indeed it is hard to see any limit to the use of the inquisition if the instant Oath is validated, for equal justification exists for its widespread imposition, and there is no barrier in terms of administrative facilities, as in the case of other methods of investigation, to its blanket use.

II.

The Issue of the Constitutionality of the County's Requiring Its Employees to Execute the Oath Was Properly Accepted by This Court for Adjudication.

A. The State Court's Judgment Is Based Upon Its Determination of This Issue.

While petitioner argued below that the County's imposition of the requirement of executing the Oath, and its dismissal of employees on the basis of disclosures in their oaths were both invalid, we here assume, *arguendo*, that the California Court correctly disposed of the latter issue as premature, and base our argument for reversal solely on the grounds of its error in holding that the requirement of execution of the Oath is constitutional. (See Point I.) The respondents, however, have contended that the constitutionality of that requirement should not be reviewed by this Court, on the basis that the State Court's decision rests on the non-Federal ground that no question as to the validity of the County's discharge of employees was ripe for adjudication (Brief

---

[44]See statement of Educational Policies Commission, composed of prominent educators including Presidents Conant of Harvard University and Eisenhower of Columbia University, that the increasing passage of special State laws for teachers' loyalty oaths is a "menace to educational freedom." New York Times, Oct. 9, 1949, p. 1.

in Opposition to Petition for Certiorari, pp. 16-17). Even if there had been such a determination as to the issues of discharge, it would not serve as a sufficient basis for the decision; in any event, we believe it is clear that in the passages quoted by respondents, wherein the Court discusses the power of the Civil Service Commission to review discharges of employees by County officials [P. 58-59] and states that discharge for "causes of the character enumerated" is speculative [P. 63], the Court is adverting to discharges on the basis of disclosures in the Oath, an issue with which we are not here concerned, rather than discharge on the basis of a refusal to subscribe to it.[45]

We submit that the State Court intended to adjudicate, and did adjudicate the issue of whether or not State compulsion to require execution of the Oath was valid under the Federal constitution, and that its decision as to the requirement rests on this ground. Thus, after setting forth the "Oath and Affidavit" to which the County employees were to subscribe [P. 48-49], the Court devoted almost the entire remainder of its opinion to consideration of the bases for its constitutionality, adverting explicitly to the Federal constitutional provisions which the petitioner claimed were violated [P. 60-61, see also P. 56]. It discussed at length the Government's right of self-preservation [P. 49-50] and its power to condition the tenure of its employees on their surrender of the right to advocate overthrow of the government [P. 51-56]; it concluded that the requirement of execution of

---

[45]The context of the Court's statements so indicates, since the first relates to a discharge "on the sole ground that the employee is 'subversive'" [P. 59] and the second appears to relate to discharge on the ground of advocacy of overthrow of the Government or membership in an organization with that objective [P. 62].

the Oath and affidavit was therefore a proper means of determining fitness for County employment [P. 56] and that such execution could be imposed as a condition of continued employment [P. 56, 57].

The Court's extended discussion of the validity of the requirement that the employees execute the Oath is clearly premised on the assumption that subscription to the Oath would be enforced by and on threat of the penalty of discharge for non-subscription. The State Court devotes the major portion of its opinion to consideration of the extent to which the State can condition employment and discharge employees for failure to observe its conditions [P. 52-56], and in particular the condition not to advocate force and violence [P. 55-56]; it seems clear that the Court was addressing itself to the State's right to discharge for refusal to execute the Oath when it so emphasized in justification for the Oath the State's right to discharge employees for advocacy of force and violence. Furthermore, the Court states explicitly that execution of the Oath can be imposed as a condition of employment, declaring that "employees who cannot subscribe to the prescribed affidavit . . . may join . . . the ranks of private employment" [P. 56] and that "the People may require such an obligation (a "loyalty obligation") from a person seeking to remain in a public position" [P. 57]. Furthermore, in the Court's repeated consideration and approval of the execution of the Oath as a "requirement" imposed by the County [P. 48, 49, 56, 57, 60], the Court clearly expresses its understanding and approval of the fact that the County would exercise its full power over the employees,—which is the power to discharge,—to force execution. And the conclusion that the State Court had no intention in the passages cited by

respondents of foreclosing itself from considering the issue of discharge for a refusal to execute the Oath, is fortified by the fact that there is no doctrinal basis for a failure to adjudicate this issue; while we concede that the doctrine of exhaustion of administrative remedies may be applicable to foreclose judicial consideration at this time of the issue of a discharge following disclosures in the Oaths, this doctrine could not correctly have been treated as a barrier to consideration of the validity of a discharge for refusal to take the Oath.[46]

In any event, if it be assumed from the passages of the opinion quoted by respondents that the State Court did not deem any question of discharge to be presented for adjudication, then the only possible interpretation of the opinion is that the State Court considered petitioner sufficiently threatened with other adverse action by the County for refusal to execute the Oath, so that the issue of

---

[46]The doctrine of the necessity for the exhaustion of administrative remedies prior to judicial review could and should have been deemed inapplicable to the issue of discharge for refusal to execute the Oath on any or all of the following grounds: The improbability of administrative relief from discharge for such refusal; the possible detriments to the employee from exhaustion of administrative remedies even if he ultimately was successful in combatting his discharge, such as stigmatization because of his threatened discharge or inability to secure full financial redress for time lost; and, most important, the fact that petitioner could not secure administrative review of the validity of a discharge for a refusal to execute without taking the inordinate risk of the loss of her livelihood. As to these various grounds for considering the doctrine of exhaustion inapplicable, see *Utah Fuel Co. v. National Bituminous Coal Commission*, 306 U. S. 561; *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587; see *Euclid v. Ambler Realty Co.*, 272 U. S. 365, 386; *Pennsylvania v. West Virginia*, 262 U. S. 553, 592; *Oklahoma National Gas Co. v. Russell*, 261 U. S. 290, 293; compare *Myers v. Bethlehem Corp.*, 303 U. S. 41.

whether or not her refusal could be penalized was nevertheless presented for adjudication. For, the opinion considered either sentence by sentence or as a whole is explicable only on the basis of the Court's realization that it was immediately confronted for adjudication with the issue of State compulsion, whether by a threat of discharge or of other disciplinary action, to force execution of the Oath. In fact, the question of adjudication of the validity of State compulsion to require execution of the Oath through penalization in employment was clearly necessary to the disposition of the cause whether or not discharge was in issue; for the threat of enforcement alleged in the complaint was that employees refusing to subscribe were "to be discharged or otherwise penalized in their employment" [Complaint, par. VII, S. 4].

There can be no doubt that a determination of the validity of the requirement of execution of the Oath was necessary to the disposition of the case, and that the State court's judgment rested on its determination that the requirement was constitutional.

B. The Issue of the Constitutionality of the County's Requiring Subscription to the Oaths Presents a Justiciable Controversy.

The respondents' position in opposing our petition for certiorari (Respondents' Brief in Opposition, p. 22 *et seq.*) that the case presents no justiciable controversy appears to be based on the argument that the threat to petitioner of a penalty for her refusal to subscribe to the Oath is not of sufficient imminence. This argument is without

merit. At the outset, we submit that the major criterion of whether a threat is sufficient to establish the existence of a controversy is here fully satisfied. For the issue at bar is specific, narrow, and clear; there is no problem of the issue's being ill-defined—the problem which has weighed heavily in impelling this Court to decline to adjudicate cases on the ground of insufficiency of the threat.[47] Here the petitioner asserts that she has the right, with impunity and free of penalty, to refuse to subscribe to the Oath promulgated by the County and to refuse to thus disclose whether or not she had any association with the listed organizations. The respondents deny she has this right and on the contrary assert the right to penalize her for such refusal. Thus, there is no question of the Court's speculating as to the scope and precise nature of the right asserted and denied. And the relief petitioner requires: a judgment that the requirement is invalid and an injunction of the County's enforcement of it by penalizing her in her employment status, is equally clear and limited. Thus, the case "admits of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts" (*Aetna Life Insurance Co. v. Haworth*, 300 U. S. 227, 240-241).

The only possible significance, therefore, in the context of this case, of an argument as to the insufficiency of the threat might be that the allegations of the complaint do not show that petitioner's asserted rights are in actual

---

[47]See, *e. g., Electric Bond and Share Co. v. S. E. C.*, 303 U. S. 419, 443; *United Public Workers v. Mitchell*, 330 U. S. 75, 89, see Justices Jackson and Frankfurter's dissenting opinions in *Connecticut Mutual Ins. Co. v. Moore*, 333 U. S. 541.

danger of impairment. But it is not for this Court to weigh the imminence of such danger in the same manner as it would, if exercising an equitable function, make a discretionary determination as to the need for injunctive relief. The purpose here is to determine whether petitioner is so little in danger that she cannot even present her claim of right and secure review of the State Court's determination of Federal constitutional questions. Accordingly, all that is necessary is that there be an actual conflict of interests in that the parties have "taken adverse positions with respect to their . . . obligations" (*Aetna Life Insurance Co. v. Haworth*, 300 U. S. at 242).[48]

The undenied allegations of the complaint herein are that the County's governing Board has adopted a recommendation to require County employees to execute the Oath [Complaint, Par. V, S. 3; Ex. A, Par. 5, S. 15]; that appointees of such Board are engaged in executing this requirement and have threatened and do now threaten, and will, unless judicially restrained, cause employees to be discharged or otherwise penalized in their employment unless they execute the Oath [Complaint, Par. VII, S. 4]; that one Board member, speaking for the remainder, stated that anyone refusing to subscribe to the Oath would be discharged [Complaint, Par. VI, S. 4]; and that petitioner refused to subscribe to the Oath [S. 32].

These allegations show the commission of acts creating a danger to petitioner of the application of sanctions for her refusal to execute the Oath and are thus sufficient to

---

[48]See Davis, *Standing to Challenge and to Enforce Administrative Action*, 49 Columb. Law Rev. (1949) 759, 760, 792.

show the existence of a controversy.[49] Unless this Court indulges in the supposition that a penalty for petitioner's refusal to take the Oath will not immediately follow the steps alleged in the complaint, it cannot hold the danger petitioner apprehends to be unreal and the conflict of interests between petitioner and respondents to be hypothetical. But such a supposition is completely unwarranted and contrary to the State Court's implicit assumption. Furthermore, such a supposition would be particularly hazardous and inappropriate in the instant case because of the drastic nature of the risk petitioner would then be forced to undergo in order to test her rights; for a decision that she could secure an adjudication of her rights only after respondents took additional action in execution of the threat of enforcement would mean that she must risk her livelihood, as well as stigmatization as disloyal, in order to invoke the Court's jurisdiction. Even

---

[49]Respondents' demurrer argued that the allegation as to the Board member's statement with respect to discharge did not specify whether or not it was made in his official capacity [S. 23] and that the allegation as to the threatened action by the Board's appointees similarly omitted such a specification and was insufficiently detailed as to the threats [S. 24]. We do not believe these points need to be debated in this Court for it would be clearly inappropriate for this Court to determine the minimum condition of litigation:—the existence of a controversy,—on the basis of a technical construction of pleadings, particularly where no such construction was made by the State courts. However, the implausibility of the argument that these acts and statements were not effected in official capacity may be noted. Furthermore, since there is no allegation of a disclaimer by the Board of these acts, they would in any event show the imminence of official enforcement. The allegations as to the threats by the Board's appointees are sufficient as a pleading of ultimate facts, particularly in view of the simple and uncomplicated nature of the point in issue: the imposition of a penalty on employees for a failure to subscribe to the Oath. Particularly in view of the unquestioned allegation as to the official determination to require execution of the Oath, the allegations as to the subsequent acts and statements of Board members and their appointees are sufficient to show the actuality of the danger of enforcement of the requirement.

under the exacting standard established in regard to the issuance of an injunction to restrain enforcement of a criminal statute, an injunction is held to lie where the alternative is the litigant's assumption of such a grave risk as is here present in order to determine her rights.[50] Moreover, a holding against petitioner's right to litigate would mean that, in the form of deciding the existence of a controversy, there would be a defeat of the purpose of the declaratory judgment procedure which "has been especially useful in avoiding the necessity . . . of having to act at one's peril or to act on one's own interpretation of his rights, or abandon one's rights because of fear of incurring dangers,"[51] and which has had particular usage in the adjudication of status, and the right to hold office.[52] Accordingly, petitioner must be deemed to have been sufficiently threatened with penalization for her refusal to execute the Oath so that a controversy exists with respect to her right to so refuse.

Finally, this case clearly meets the criterion developed in recent decisions of this Court as to the existence of a controversy; the test is whether the litigant is sufficiently threatened with sanctions for non-compliance with a measure so that he has a real and actual need to know whether it is valid and whether to comply with it in order

---

[50]See *Toomer v. Witsell*, 334 U. S. 385, where this Court recently held an injunction was appropriate where any other procedure for testing rights would have exposed the petitioner to substantial losses or risks of loss. See also *Ex parte Young*, 209 U. S. 123, 165.

[51]Senate Report No. 1005, 73rd Cong., 2d Sess., pp. 2-3, discussing State declaratory judgment statutes (quoted by Douglas, J., dissenting in *United Public Workers v. Mitchell*, 330 U. S. 75, at p. 117.) See *Columbia Pictures Corp. v. DeToth*, 26 Cal. 2d 753, 760; *Maguire v. Hibernia Savings and Loan Society*, 23 Cal. 2d 719.

[52]*Perkins v. Elg*, 307 U. S. 325, at 349-50; Borchard, *Declaratory Judgment* (2d ed.), 858, *et seq.*

to avoid the risk of sanctions. Thus, in *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18, this Court observed that the order of a State administrative agency which was there involved was not expressed as a "command" and could be enforced only through a proceeding which had not yet been commenced. Nevertheless, this Court held that it had jurisdiction to consider the validity of the order because the order "told the employer, subject to judicial review, with whom he could not refuse to negotiate without risk of sanctions" (336 U. S. at p. 24).[53] Certainly here the respondents have made it clear and definite what action petitioner must take to avoid the risk of very serious sanctions and petitioner has a crucial need to know whether or not to maintain her refusal to comply with their order.[54]

Furthermore, in view of the California Court's approval of the Oath requirement, it can no longer be doubted, even if it could have been doubted prior thereto, that there is an immediate danger of its enforcement and that petitioner is immediately confronted with the necessity of foregoing her asserted rights or risking sanctions. As in *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541, there has here been a declaration of validity by the

---

[53]Similarly, in *Columbia Broadcasting System v. United States*, 316 U. S. 407, it was held that a party who was threatened under the terms of a Commission regulation with a penalty for non-compliance therewith, could litigate its validity, though it was "not certain whether the Commission will institute proceedings to enforce the penalty incurred under its regulations for non-compliance." (316 U. S. at p. 418.)

[54]It should be noted that the State's need to threaten a specific penalty in order to coerce compliance was decreased by the coercive force inhering in its mere issuance of an order to persons whose livelihood it controls. Compare *I. A. M. v. National Labor Relations Board*, 311 U. S. 72, 78; *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477.

State Courts which would compel petitioner to comply in order to escape sanctions "unless this Court reviewed the federal constitutional issues and decided them in appellants' favor" (at p. 550); and as in the *Connecticut Mutual* case, a controversy therefore exists.

The effect of a decision by this Court that there is here no justiciable controversy would plainly be that petitioner, though deprived of this Court's review of the Federal constitutionality of the County's requirement, would nevertheless have to comply with it or suffer penalization. For a repeated attempt to secure an adjudication of the validity of the requirement would surely fail in the California Courts on the ground of *res adjudicata*.[55] Thus she as well as all the other employees upon whose behalf the action is brought would be permanently foreclosed from this Court's review of the constitutional questions.

Petitioner's assertion of the right to refuse to take the Oath, if it is in fact unconstitutional, is not only of private but of public concern.[56] Thus, her right to litigate in order to determine whether or not to comply is in special need of protection. Accordingly, on grounds of policy

---

[55]Compare *Maryland Casualty Co. v. Pacific Coal and Oil Co.*, 312 U. S. 270, 274, as to the consequent inappropriateness of this Court's holding that no controversy exists.

[56]See *Pennekamp v. Florida*, 328 U. S. 331, 346. And see Justice Jackson dissenting in *Brinegar v. United States*, 338 U. S. 160, and pointing out the advantage with respect to the preservation of First Amendment freedoms obtaining from the fact that interference with them is usually in such form that "the citizen can and often does go to the court and obtain an injunction."

and fairness as well as precedent, petitioner must be deemed to have a justiciable controversy with respondents."[57]

Conclusion.

We respectfully submit that the Los Angeles County Organizations Oath requirement should be invalidated as unconstitutional under the First and Fourteenth Amendments to the Constitution and the decision of the District Court of Appeal of California should be reversed.

We further respectfully submit that invalidation of the Oath is of high importance for the preservation of First Amendment freedoms not only in Los Angeles County but throughout this country. There is a growing movement throughout the nation for the imposition of Loyalty Oaths, the ascertainment of beliefs and associations in attempts to determine "loyalty," and official condemnation as "subversive" of those which are disapproved. The inevitable result of such efforts is, as in the case of the Oath here in issue, suppression of free expression, thought and association, and of the "vigorous enlightenment" which is essential for democratic growth. In no other democratic Nation have measures been undertaken to

---

[57]The question of exhaustion of administrative remedies raised by respondents clearly does not affect the question of whether a controversy exists. The fact that there may be administrative relief from the threatened action does not mean that a present threat does not exist; and in determining whether a controversy exists this Court cannot usurp the State court's function of determining the State question of the proper division of functions between the administrative and judicial agencies.

determine "loyalty" of government employees by Oaths and investigations with respect to their beliefs and associations.[88]

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
EDWARD J. ENNIS,
NANETTE DEMBITZ,
Counsel for Petitioner.

NANETTE DEMBITZ,
EDWARD J. ENNIS,
OSMOND K. FRAENKEL,
ARTHUR GARFIELD HAYS,
FRED OKRAND,
A. L. WIRIN,
Counsel for American Civil Liberties Union, Of Counsel.

---

[88]Emerson and Helfeld, *Loyalty Among Government Employees*, 58 Yale Law Journal (1948) 1, 120-133.